

CIVIL SERVICE COMMISSION MINUTES

September 6, 2000

A regular meeting of the Civil Service Commission was held at 2:30 p.m., in Room 358 at the County Administration Building, 1600 Pacific Highway, San Diego, California.

Present were:

Mary Gwen Brummitt
Roy Dixon
Barry I. Newman

Comprising a quorum of the Commission

Absent were:

Sigrid Pate
Gordon Austin

Support Staff Present:

Larry Cook, Executive Officer
Ralph Shadwell, Senior Deputy County Counsel
Selinda Hurtado-Miller, Reporting

CIVIL SERVICE COMMISSION MINUTES
September 6, 2000

1:45 p.m. CLOSED SESSION: Discussion of Personnel Matters and Pending Litigation

2:30 p.m. OPEN SESSION: Room 358, 1600 Pacific Highway, San Diego, California 92101

PRE-AGENDA CONFERENCE

<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
<u>3,6,7,13,17</u>		<u>8,9</u>	<u>5</u>

COMMENTS Motion by Dixon to approve all items not held for discussion; seconded by Newman. Carried.

CLOSED SESSION AGENDA
County Administration Center, Room 458
(Notice pursuant to Government Code Sec. 54954.2)
Members of the Public may be present at this
location to hear the announcement of the
Closed Session Agenda

A. Commissioner Dixon: James Gattey, Esq., on behalf of **Frank Gill**, Correctional Deputy Probation Officer II, appealing an Order of Suspension and Charges from the Department of Probation.

B. Ralph Shadwell, Senior Deputy County Counsel: Update on recent litigation relating to **Dave Lopez, Jim Parks, Robert Roberson and Larry Staley**.

REGULAR AGENDA
County Administration Center, Room 358

NOTE: Five total minutes will be allocated for input on Agenda items unless additional time is requested at the outset and it is approved by the President of the Commission.

MINUTES

1. Approval of the Minutes of the regular meeting of August 16, 2000.

Approved.

CONFIRMATION OF ASSIGNMENTS AND REASSIGNMENTS

Assignments

2. Commissioner Austin: Daniel Morales, S.E.I.U. Local 2028 on behalf of **Karl Rosenkranz**, Building Maintenance Engineer, appealing an Order of Suspension from the Department of General Services.

Confirmed.

Reassignments

3. Commissioner Pate as hearing officer in the appeal of **George Dean** from an Order of Suspension and Charges from the Department of Probation. Commissioner Dixon previously assigned.

Todd Tappe, Esq. requested that this matter be re-assigned back to Commissioner Dixon stating that Commissioner Dixon recently heard a similar case and would therefore be familiar with like circumstances.

The Commissioners explained that they are appointed on a rotating basis and in keeping with precedence and fairness, a Commissioner shall not be selectively assigned to a matter upon the request of any party.

Motion by Dixon to confirm assignment to Pate; seconded by Newman. Carried.

4. Commissioner Newman as hearing officer in the appeal of **Maurice Jackson** from an alleged punitive transfer in the Department of Probation. Commissioner Pate previously assigned.

Confirmed.

WITHDRAWALS

5. Commissioner Austin: Everett Bobbitt, Esq. on behalf of **Beverly Cullen**, Sheriff's Deputy, appealing an Order of Suspension from the Sheriff's Department.

Withdrawn.

DISCIPLINES

6. Commissioner Dixon: James Gattey, Esq., on behalf of **Frank Gill**, Correctional Deputy Probation Officer II, appealing an Order of Suspension and Charges from the Department of Probation.

FINDINGS AND RECOMMENDATIONS:

Employee was charged with Cause I - conduct unbecoming an officer of the Probation Department (failure to notify supervisor of a physical contact with a detainee); Cause II - failure of good behavior; and Cause III - acts incompatible with and inimical to the public service. Employee has been a Correctional Deputy Probation Officer for over 12 years. In December of 1999, he was reassigned to Juvenile Hall where he had previously served for one year in 1994. In January, 2000, Employee was the shift leader in unit 100 in Juvenile Hall. On that morning a particular detainee was expelled from the morning session of school and returned to his assigned room. This particular detainee was known for his unruly behavior, and after being returned to his room, repeatedly yelled and banged on the door with his sandals. Soon thereafter, Employee opened the detainee's door and directed him to deliver the sandals. Detainee refused, exhibiting aggression and defiance. Employee requested that another CDPO come to the room to

watch and assist. Employee grabbed detainee's arm above the elbow with one hand and at the wrist with the other, at which point, detainee agreed to comply. The next evening, detainee's mother complained that her son had been choked, which the Department concluded was a false allegation. However, the Department's investigation concluded that Employee violated Department policies by failing to immediately report the incident to a supervisor, failing to document the incident, failing to refer detainee for a medical evaluation/treatment and failing to provide detainee with a grievance form (which he allegedly had demanded).

The Department concluded that Employee's conduct during the incident was in compliance with the Department's policies and procedures. Employee maintained that the physical contact at issue was not the type that required reporting, documenting and referring for medical evaluation/treatment. The Department agreed that not every physical contact involves the Department's reporting, etc. Accordingly, the primary issue was what level of physical contact required follow-up. The Department's general policies and procedures and Juvenile Hall's policies and procedures provide little guidance regarding the level of physical contact that needs to be reported. In fact, the testimony at the hearing that indicated CDPOs erred on the side of reporting physical contacts that did not result in pain or injury, appeared more to do with their concern about an ambiguous standard and arbitrary supervisorial interpretation. It is also relevant that Employee was recently reintroduced to the environment as a shift leader without updated training in the nuances of the Department's expectations in Juvenile Hall. Accordingly, the hearing officer concluded that there was insufficient evidence that Employee violated Section 9.12.3 of the Juvenile Hall policies and procedures regarding contact with a detainee.

A separate and distinct issue arose regarding backpay. Employee was served with a "Notice of Intent to Suspend" and "Proposed Order of Suspension and Charges" which called for fifteen 8-hour workdays of suspension commencing on April 23, 2000. Employee initiated serving his suspension on April 25, 2000 (prior to a Skelly Conference), taking six days off from work from April 25, 2000 to May 2, 2000. The Department deemed Employee's absence as six days of Leave Without Pay. On May 24, 2000 Employee was served with an "Order of Suspension and Charges" calling for a nine 8-hour workday suspension commencing on May 31, 2000. Counsel for Employee requested back pay for fifteen (15) days of suspension rather than nine (9) days of suspension should his client prevail.

It was therefore recommended that the Order of Suspension be reversed; that Employee be reimbursed for back pay and benefits plus interest for nine eight-hour workdays (72 hours) less any amount received from employment during the suspension in accordance with this proposed decision; that Employee not be awarded back pay or benefits for his absence from April 25, 2000 to May 2, 2000; that this proposed decision shall become effective upon the date of approval by the Civil Service Commission; and that the Commission approve and file this report.

Motion by Dixon to approve Findings and Conclusions; seconded by Newman. Carried.

RECONSIDERATION

7. William Songer, Deputy County Counsel, on behalf of the Department of Probation, requesting reconsideration of the Commission's decision to grant a Rule VII hearing to **Maurice Jackson**, a Senior Probation Officer alleging a punitive transfer by the Department of Probation. (CSC Mtg. of 08/16/00.)

RECOMMENDATION: Consider request from the Department of Probation.

Todd Tappe, attorney for Appellant came before the Commission regarding reconsideration of the Commission's August 16, 2000 decision which granted Appellant a hearing. Mr. Tappe maintained that Appellant was disciplined by the Department and that by not granting him a hearing violates Appellant's due process.

The Commission requested advice from Deputy County Counsel, Ralph Shadwell. Mr. Shadwell explained that there were two issues before the Commission: (1) reconsideration of the previous determination to grant a hearing; and (2) If reconsideration is granted, and the question of disciplinary action taken by the Department is unclear, a pre-hearing can be conducted to determine whether or not Appellant's transfer was punitive in nature.

Larry Cook, Executive Officer, recommended that the Commission grant the request for reconsideration and assign a Commissioner to conduct a Rule VII pre-hearing conference to determine whether or not disciplinary action had been taken against Appellant. The pre-hearing would be limited to that issue only, and the hearing officer would then bring his decision back to the full Commission to determine whether or not to conduct a full Rule VII hearing (or in the alternative, a Rule XI investigation).

Commissioner Newman moved for reconsideration, seconded by Commissioner Brummitt. Before voting however, Commissioner Dixon amended the Motion: He moved to reconsider and conduct a pre-hearing conference to determine the discipline issue at which time a decision would be made by the Commission to conduct a Rule VII hearing or Rule XI investigation.

Motion by Dixon for reconsideration and to conduct a pre-hearing conference; seconded by Brummitt. Carried.

DISCRIMINATION

Complaints

8. **Yvonne Carla Hand**, former Legal Assistant I, Office of the District Attorney, alleging age, race, and disability discrimination by the Office of the District Attorney.

RECOMMENDATION: Assign an Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back.

Staff recommendation approved. Commissioner Dixon assigned.

9. **Edwin Vargas**, former Aging Program Specialist II, Health and Human Services Agency, alleging gender, race, national origin, and sexual orientation discrimination by the Health and Human Services Agency. (See also No. 18 below.)

RECOMMENDATION: Assign an Investigating Officer and concurrently appoint the Office of Internal Affairs (OIA) to conduct a discrimination investigation and report back. Hold OIA's investigation in abeyance pending the conclusion of the Department of Fair Employment and Housing's investigation.

Staff recommendation approved. Commissioner Brummitt assigned.

SELECTION PROCESS

Complaints

10. Rick Pinckard, Esq., on behalf of **Benjamin Bensoul, M.D.**, former Psychiatrist III, appealing the Health and Human Services Agency's selection process regarding the Psychiatrist III classification.

RECOMMENDATION: Deny Request.

Staff recommendation approved.

11. Fred Fox, S.E.I.U. Local 2028, on behalf of **Eric Enell**, Code Enforcement Officer II, Department of Planning and Land Use, appealing his non-selection as a Code Enforcement Coordinator by the Department of Planning and Land Use.

RECOMMENDATION: Deny Request.

Staff recommendation approved.

12. Fred Fox, S.E.I.U. Local 2028, on behalf of **Mark Lewis**, Waste Management Coordinator, Department of Environmental Health, appealing his non-selection as a Code Enforcement Coordinator by the Department of Planning and Land Use.

RECOMMENDATION: Deny Request.

Staff recommendation approved.

Findings

13. Commissioner Brummitt: Thomas Gayton, Esq., on behalf of **Joann DeBartolo** appealing the Department of Probation's non-selection of her for the classification of Correctional Deputy Probation Officer I.

FINDINGS & RECOMMENDATION:

The selection process that Appellant contested was extensive, consisting of published requirements, a written exam, interviews and a background check. Although her score was high on the written exam,

Appellant was not selected as a CDPO I because of information that came from a background check. The in camera review of the background investigation revealed that the information came from several sources: records provided by Appellant, interviews and public records. It was the cumulative weight of the information that led to the Department's decision. It is therefore recommended that Appellant's appeal be denied; that this proposed decision shall become effective upon the date of approval by the Civil Service Commission; and that the Commission approve and file this report.

**Motion by Brummit to approve Findings and Recommendations;
seconded by Dixon. Carried.**

14. **Karen Abbott**, appeal of removal of her name from the employment list for Correctional Deputy Probation Officer I by the Department of Human Resources.

15. **Sheila McCloud**, appeal of removal of her name from the employment list for Correctional Deputy Probation Officer I by the Department of Human Resources.

16. **Scott Spykstra**, appeal of removal of his name from the employment list for Corrections Deputy Sheriff by the Department of Human Resources.

RECOMMENDATION: Ratify item Nos. 14-16. Appellants have been successful in the appellate process provided by Civil Service Rule 4.2.2.

Item Nos.14-16 ratified.

INVESTIGATIONS

Findings

17. Commissioner Newman: **Tonie Hyde**, former Housing Program Review Coordinator, Department of Housing and Community Development, requesting a review of her former classification.

FINDINGS & RECOMMENDATIONS:

Employee is a former Housing Program Review Coordinator who believed that she was performing the duties of a Housing Program Analyst II in the Department of HCD. On July 17, 2000 Employee filed with the Commission a timely request for a classification hearing under Rule XII. She claimed that for more than a year she attempted to initiate a classification review from HCD and later from DHR. The first formal request she submitted to HCD was on February 24, 2000. One day later, on February 25, 2000 she transferred to the District Attorney's Office.

Civil Service Rule XII provides for five steps of classification review when an employee believes that he/she is working out of class. During the course of the Rule XI investigation, the investigating

officer thoroughly reviewed all verbal and written information that was available. One of the more significant matters reviewed was the language in Step 1 and Step 5 of Rule 12.5. Step 1 provides that an employee may file a written request to his/her appointing authority within 60 days of such six-month period that employee alleges he/she had been working out of class. The rule states that the six-month period precedes the request. The Investigating Officer interprets this language to mean that an employee is eligible to request a classification review even though she transferred from the Department one day after filing her request. Since Employee claimed to have worked out of class from February 12, 1999 through February 24, 2000, the Investigating Officer interprets the six months to be the period immediately preceding her request on February 24, 2000 (8/24/99 to 2/24/00).

Step 5 of Rule 12.5 provides for three possible remedies should an employee be successful before the Commission as a result of a classification hearing. Two of those remedies do not apply in this case since they require that the employee still be employed in the department. The third possible remedy which relates to back pay, states in part ". . .if the involuntary working out of class continues beyond six (6) months, the Commission may in its discretion order the appointing authority to pay. . .for that period in excess of six (6) months until the date of the Commission decision. . .". The undersigned Investigating Officer interprets the above language to mean that should Employee be successful in a Commission hearing and if the Commission considered granting her back pay as provided for in the above-quoted language, the amount of back pay could not amount to more than one day, i.e. February 24, 2000, Employee's last day of work at HCD before transferring to the District Attorney's Office on February 25, 2000. In this case the time and expense involved in conducting a complex DHR classification review and Commission hearing is not warranted. Had Employee filed her request within sixty days after the first six months of allegedly working out of class (2/22/99 through 8/12/99) she may have been granted a remedy.

It was therefore recommended that the employee's request for a Rule XII classification review hearing be denied; that the proposed recommendations shall become effective upon the date of approval by the Civil Service Commission; and the Commission approve and file this report.

Motion by Newman to approve Investigation Report; seconded by Dixon. Carried.

LIBERTY INTEREST

Complaints

18. **Edwin Vargas**, former Aging Program Specialist II, Health and Human Services Agency, requesting a Liberty Interest hearing regarding his failure of probation in the classification of Aging Program Specialist II

in the Health and Human Services Agency. (See also No. 9 above.)

RECOMMENDATION: Hold in abeyance pending outcome of the discrimination matters.

Staff recommendation approved.

OTHER MATTERS

Extension of Temporary Appointments

19. Health and Human Services Agency

2 Residential Care Worker Trainees (Roxanne Farmer & Maria Olonso)

20. Human Resources

1 Administrative Analyst III (Melba Muyco)

21. Department of Parks and Recreation

1 Equipment Operator (Gene Perez)

22. Department of Public Works

A. 1 Storekeeper II (Sheila Hamilton)

B. 1 Sr. Civil Engineer (Howard Sallenbach)

RECOMMENDATION: Ratify Item Nos. 19-22.

Item Nos. 19-22 ratified.

Ratification of Medical Provider

23. Ratification of **Gerard Sumprer, Ph.D.** as an additional name to the list of medical providers to be used for fitness for duty and pre-employment evaluations at the request of the Department of Human Resources.

RECOMMENDATION: Ratify Provider.

Item No. 23 ratified.

24. Public Input. Wendell Prude, SEIU Local 2028, addressed the Commission regarding Reconsideration issues brought before the Commission.

ADJOURNMENT: 4:00 P.M.

NEXT MEETING OF THE CIVIL SERVICE COMMISSION WILL BE OCTOBER 4, 2000.